

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDWARD D. FAGAN, et al.,

Petitioners,

- against -

THE E-ACCOUNTABILITY FOUNDATION,
et al.,

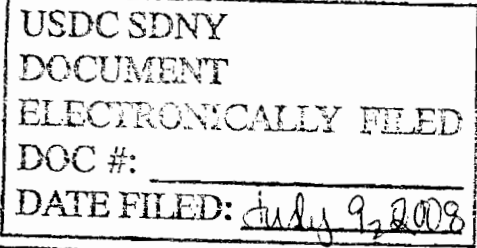
Respondents.

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DEBORAH A. BATTS, United States District Judge.

Petitioners commenced this litigation in the Supreme Court of the State of New York for New York County by petitioning for pre-action discovery and emergency relief to aid in bringing an action against Respondents pursuant to CPLR § 3102(c).

Respondent Elizabeth Cormier removed the case to this Court pursuant to 28 U.S.C. § 1446 and the All Writs Act, 28 U.S.C. § 1651(a). Respondent Cormier alleges that this Court has jurisdiction over the matter because a related action was first filed in federal court, Teachers4Action, et al. v. Michael G. Bloomberg, et al., 08 CV 548 (VM).

Under 28 U.S.C. § 1446(c)(4): "The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand." The All Writs Act gives a federal court authority to remove a state-court case



08 Civ. 5534 (DAB)
ORDER

in order to prevent the frustration of orders already issued by a federal court, or those which might potentially be issued, as long as the federal court independently would have had original subject matter jurisdiction over the suit. Syngenta Crop Protection, Inc. v. Henson, 537 U.S. 28, 29 (2002).

Plaintiffs in Teachers4Action comprise an unincorporated association which brings claims of, inter alia, Fifth and Fourteenth Amendment violations, discrimination, libel and slander based on the use of public school teacher "Temporary Reassignment Centers" against the New York City Department of Education and various individual Defendants. Petitioners in the instant case include counsel for the Teachers4Action association, Edward D. Fagan, as well as Elizabeth Silver Fagan, who together petition for pre-action disclosure and emergency relief to prepare a lawsuit based on an allegedly libelous and defamatory internet campaign waged by, inter alia, Respondent Elizabeth Combier.

Respondent's Notice for Removal fails to establish how the removed state court action threatens the integrity of the federal court's consideration or disposition of Teachers4Action. Indeed, Judge Victor Marrero declined to accept this matter as related to Teachers4Action because the legal and factual issues in Teachers4Action are completely distinct from the proposed libel

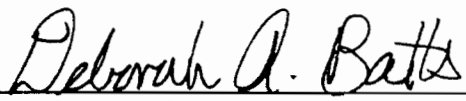
action. Moreover, Respondent's Notice of Removal fails to identify this Court's basis for original jurisdiction over a petition for pre-action discovery and emergency relief.

Respondent fails to set forth any basis for its belief that the All Writs Act confers jurisdiction on this Court over this action, and no other facts or circumstances before the Court permit the Court to infer that jurisdiction exists. Where a court finds that it lacks jurisdiction over a case, dismissal is mandatory. See Alliance of Am. Insurers v. Cuomo, 854 F.2d 591, 605 (2d Cir. 1988). Accordingly, the Court sua sponte remands this case back to New York Supreme Court on the basis of lack of subject matter jurisdiction.

The Clerk of the Court is directed to CLOSE this case and remove it from the docket.

SO ORDERED.

DATED: New York, New York
July 9, 2008


DEBORAH A. BATTS
United States District Judge